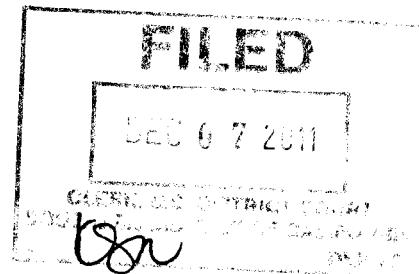


ORIGINAL

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14
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16



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,) Case No. 11CR4767-GT
12 Plaintiff,)
13 v.) PLEA AGREEMENT
14 CARLOS BRAVO-AVENDANDO,) (Fast Track)
15 Defendant.)
16 _____)

17 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
18 AMERICA, through its counsel, Laura E. Duffy, United States Attorney,
19 and Emily J. Keifer, Assistant United States Attorney, and defendant,
20 CARLOS BRAVO-AVENDANDO, with the advice and consent of RoseMarie
21 Maliekel, counsel for defendant, as follows:
22 //
23 //
24 //
25 //
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28

EJK:tld 6/2/11

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I

THE PLEA

A. The Charge. Defendant agrees to waive Indictment and plead guilty to a single-count Information charging that:

On or about October 2, 2011, within the Southern District of California, defendant CARLOS BRAVO-AVENDANDO, an alien, who previously had been excluded, deported and removed from the United States to Mexico, was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission to the United States; in violation of Title 8, United States Code, Section 1326(a) and (b).

It is further alleged that defendant was removed from the United States subsequent to March 29, 2006.

B. Early Disposition (Fast-Track) Program. The disposition contemplated by this plea agreement is pursuant to an early disposition (Fast-Track) program authorized by the Attorney General of the United States and the United States Attorney for the Southern District of California.

11

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant is an alien and not a citizen of the United States;
2. Defendant was excluded, deported, or removed from the United States; and
3. Defendant thereafter was subsequently found in the United States after knowingly and voluntarily reentering and remaining in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, having expressly consented to

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defendant's reapplication for admission to the United States.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. Defendant is an alien and not a citizen of the United States;
2. On or about June 22, 2004, defendant suffered a felony conviction for Bank Fraud, in violation of 18 United States Code § 1344, in the United States District Court, Northern District Of Illinois;
3. Defendant subsequently was lawfully excluded, deported and removed from the United States to Mexico on December 12, 2007; and,
4. As alleged in the Information, on October 2, 2011, defendant thereafter was subsequently found in the United States within the Southern District of California after knowingly and voluntarily reentering and remaining in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, having expressly consented to defendant's reapplication for admission to the United States.

III

PENALTIES

Defendant understands that the crime to which defendant is
pleading guilty carries the following penalties:

- A. A maximum 20 years in prison;
- B. A maximum \$250,000.00 fine;
- C. A mandatory special assessment of \$100.00 per count; and
- D. A term of supervised release of no more than 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to

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1 serve in prison all or part of the term of supervised
2 release.

3 **IV**

4 **DEFENDANT'S WAIVER OF TRIAL RIGHTS**

5 Defendant understands that this guilty plea waives the right to:

6 A. Continue to plead not guilty and require the Government to
7 prove the elements of the crime beyond a reasonable doubt;
8 B. A speedy and public trial by jury;
9 C. The assistance of counsel at all stages of trial;
10 D. Confront and cross-examine adverse witnesses;
11 E. Present evidence and to have witnesses testify on behalf of
12 defendant; and,
13 F. Not testify or have any adverse inferences drawn from the
failure to testify.

14 **V**

15 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE
PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION**

16 The Government represents that any information establishing the
17 factual innocence of defendant known to the undersigned prosecutor in
18 this case has been turned over to defendant. The Government will
19 continue to provide such information establishing the factual
20 innocence of defendant.

21 Defendant understands that if this case proceeded to trial, the
22 Government would be required to provide impeachment information
23 relating to any informants or other witnesses. In addition, if
24 defendant raised an affirmative defense, the Government would be
25 required to provide information in its possession that supports such
26 a defense. Defendant acknowledges, however, that by pleading guilty
27 defendant will not be provided this information, if any, and defendant
28 also waives the right to this information. Finally, defendant agrees

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1 not to attempt to withdraw the guilty plea or to file a collateral
2 attack based on the existence of this information.

3 VI

4 **DEFENDANT'S REPRESENTATION THAT**
5 **GUilty PLEA IS KNOWING AND VOLUNTARY**

6 Defendant represents that:

7 A. Defendant has had a full opportunity to discuss all the
8 facts and circumstances of this case with defense counsel
9 and has a clear understanding of the charges and the
10 consequences of this plea. Defendant further understands
11 that the conviction in this case may subject defendant to
various collateral consequences, including but not limited
to deportation, removal or other adverse immigration
consequences; revocation of probation, parole, or
supervised release in another case; none of which will
serve as grounds to withdraw defendant's guilty plea;

12 B. No one has made any promises or offered any rewards in
13 return for this guilty plea, other than those contained in
this agreement or otherwise disclosed to the Court;

14 C. No one has threatened defendant or defendant's family to
15 induce this guilty plea; and

16 D. Defendant is pleading guilty because in truth and in fact
defendant is guilty and for no other reason.

17 VII

18 **AGREEMENT LIMITED TO**
19 **U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA**

20 This plea agreement is limited to the United States Attorney's
21 Office for the Southern District of California, and cannot bind any
22 other federal, state or local prosecuting, administrative, or
23 regulatory authorities, although the Government will bring this plea
24 agreement to the attention of other authorities if requested by the
25 defendant.

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28 //

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VII

APPLICABILITY OF SENTENCING GUIDELINES

3 Defendant understands the sentence imposed will be based on the
4 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
5 further that in imposing the sentence, the sentencing judge must
6 consult the United States Sentencing Guidelines ("Guidelines") and
7 take them into account. Defendant has discussed the Guidelines with
8 defense counsel and understands that the Guidelines are only advisory,
9 not mandatory, and the Court may impose a sentence more severe or less
10 severe than otherwise applicable under the Guidelines, up to the
11 maximum in the statute of conviction. Defendant understands further
12 that the sentence cannot be determined until a presentence report has
13 been prepared by the U.S. Probation Office and defense counsel and the
14 Government have had an opportunity to review and challenge the
15 presentence report. Nothing in this plea agreement shall be construed
16 as limiting the Government's duty to provide complete and accurate
17 facts to the district court and the U.S. Probation Office.

IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

20 This plea agreement is made pursuant to Federal Rule of Criminal
21 Procedure 11(c)(1)(B). Defendant understands that the sentence is
22 within the sole discretion of the sentencing judge. The Government
23 has not made and will not make any representation as to what sentence
24 defendant will receive. Defendant understands that the sentencing
25 judge may impose the maximum sentence provided by statute, and is also
26 aware that any estimate of the probable sentence by defense counsel
27 is a prediction, not a promise, and is not binding on the Court.
28 Likewise, the recommendation made by the Government is not binding on

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1 the Court, and it is uncertain at this time what defendant's sentence
2 will be. Defendant also has been advised and understands that if the
3 sentencing judge does not follow any of the parties' sentencing
4 recommendations, defendant nevertheless has no right to withdraw the
5 plea.

6 **X**

7 **PARTIES' SENTENCING RECOMMENDATIONS**

8 **A. SENTENCING GUIDELINE CALCULATIONS**

9 Although the parties understand that the Guidelines are only
10 advisory and just one of the factors the Court will consider under
11 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
12 recommend the following Base Offense Level, Specific Offense
13 Characteristics, Adjustments and Departures:

14	1. Base Offense Level [USSG §2L1.2]	8
15	2. Prior Conviction [USSG § 2L1.2(b)(1)(A)(B)(C)(D)(E)] ¹	+8
16	3. Acceptance of Responsibility [USSG § 3E1.1]	-3 or -2
17	4. Departure for Fast-Track [USSG § 5K3.1]	-2 ²

20 **B. ACCEPTANCE OF RESPONSIBILITY**

21 Notwithstanding paragraph A.3 above, the Government will not
22 recommend any adjustment for Acceptance of Responsibility if

24 ¹ The parties agree that if, before defendant is sentenced,
25 contrary or additional information is discovered concerning
defendant's criminal history which changes defendant's applicable SOC,
then the Government may recommend a sentence based upon any such
26 changes.

27 ² The Government reserves the right to reduce its recommended
28 departure if defendant does not proceed to sentencing on the first
date set by the Court, unless the parties agree to a continuance or
sentencing is continued on the Court's own motion.

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1 defendant:

- 2 1. Fails to admit a complete factual basis for the plea
3 at the time it is entered; or
- 4 2. Denies involvement in the offense, gives conflicting
5 statements about that involvement, or is untruthful
6 with the Court or probation officer; or
- 7 3. Fails to appear in court; or
- 8 4. Engages in additional criminal conduct; or
- 9 5. Attempts to withdraw the plea; or
- 10 6. Refuses to abide by any lawful court order.

11 C. ADJUSTMENTS; DEPARTURES; AND SENTENCE REDUCTIONS
12 UNDER 18 U.S.C. § 3553

13 The parties agree defendant may recommend additional upward or
14 downward adjustments or departures, including any criminal history
15 departures under USSG § 4A1.3, or other sentence reductions under 18
16 U.S.C. § 3553.

17 D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

18 The parties have **no** agreement as to defendant's Criminal History
19 Category.

20 E. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

21 The parties agree that the facts in the "factual basis" paragraph
22 of this agreement are true, and may be considered as "relevant
23 conduct" under USSG § 1B1.3 and as the nature and circumstances of the
24 offense under 18 U.S.C. § 3553(a)(1).

25 F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

26 The government will recommend that defendant be sentenced to the
27 high end of the advisory guideline range as calculated by the parties
28 at the time of sentencing, pursuant to this agreement.

29 G. SPECIAL ASSESSMENT

30 The parties will jointly recommend that defendant pay a special

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1 assessment in the amount of \$100.00 per felony count of conviction,
2 to be paid forthwith at time of sentencing. The special assessments
3 shall be paid through the office of the Clerk of the District Court
4 by bank or cashier's check or money order made payable to the "Clerk,
5 United States District Court."

6 H. STIPULATION TO REMOVAL

7 If defendant is not a United States citizen or national, either
8 before or immediately following sentencing, defendant agrees to an
9 order of removal from the United States entered by Executive Office
10 for Immigration Review or authorized Department of Homeland Security
11 official. Defendant understands that defendant will not be removed
12 until defendant has served any criminal sentence imposed in this or
13 any other case. Defendant further waives any right to appeal, reopen
14 or challenge the removal order, in this or any subsequent case,
15 administrative, civil or criminal.

16 XI

17 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

18 In exchange for the Government's concessions in this plea
19 agreement, defendant waives, to the full extent of the law, any right
20 to appeal or to collaterally attack the conviction and sentence,
21 except a post-conviction collateral attack based on a claim of
22 ineffective assistance of counsel, unless the Court imposes a
23 custodial sentence above the high end of the guideline range
24 recommended by the Government pursuant to this agreement at the time
25 of sentencing. If the custodial sentence is greater than the high end
26 of that range, defendant may appeal, but the Government will be free
27 to support on appeal the sentence actually imposed. If defendant
28 believes the Government's recommendation is not in accord with this

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1 plea agreement, defendant will object at the time of sentencing;
2 otherwise the objection will be deemed waived.

3 If defendant breaches this plea agreement, at any time, in any
4 way, including but not limited to appealing or collaterally attacking
5 the conviction or sentence, the Government may prosecute defendant for
6 any counts, including those with mandatory minimum sentences,
7 dismissed or not charged pursuant to this plea agreement.
8 Additionally, the Government may use any factual admissions made by
9 defendant pursuant to this plea agreement in any such prosecution.

10

XII

11

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

12 This plea agreement is based on the understanding that, prior to
13 defendant's sentencing in this case, defendant has not committed or
14 been arrested for any offense not known to the Government prior to
15 defendant's sentencing. This plea agreement is further based on the
16 understanding that defendant has committed no criminal conduct since
17 defendant's arrest on the present charges, and that defendant will
18 commit no additional criminal conduct before sentencing. If defendant
19 has engaged in or engages in additional criminal conduct during this
20 period, or breaches any of the terms of any agreement with the
21 Government, the Government will not be bound by the recommendations
22 in this plea agreement, and may recommend any lawful sentence. In
23 addition, at its option, the Government may move to set aside the
24 plea.

25 //

26 //

27 //

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XIII

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

xv

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

11 By signing this agreement, defendant certifies that defendant has
12 read it (or that it has been read to defendant in defendant's native
13 language). Defendant has discussed the terms of this agreement with
14 defense counsel and fully understands its meaning and effect.

xvi

DEFENDANT SATISFIED WITH COUNSEL

17 Defendant has consulted with counsel and is satisfied with
18 counsel's representation.

LAURA E. DUFFY
United States Attorney

EMILY J. KEIFER
Assistant U.S. Attorney

ROSEMARIE MALIEKEL
Defense Counsel

26 IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION
ABOVE ARE TRUE.

27 *A. J. J.*

Carlos-Bravo. A
CARLOS BRAVO-AVENDANDO
Defendant